

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

NICHOLE L. WAGGENER,

No. 03:11-CV-6108-PK

Plaintiff,

ORDER

v.

MICHAEL J. ASTRUE, Commissioner,  
Social Security Administration,

Defendant.

Alan Stuart Graf  
Alan Stuart Graf P.C.  
316 Second Rd  
Summertown, TN 38483

Attorney for Plaintiff

Adrian L. Brown  
U.S. Attorney's Office  
1000 SW Third Avenue, Suite 600  
Portland, OR 97204

///

///

///

Mathew W. Pile  
Social Security Administration  
Office of the General Counsel  
701 5th Avenue, Suite 2900, M/S 901  
Seattle, WA 98104

Attorneys for Defendant

HERNANDEZ, District Judge:

Magistrate Judge Papak issued a Findings and Recommendation (#17) on January 20, 2012, in which he recommends that this Court affirm the Commissioner's decision to deny Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") to Plaintiff. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Plaintiff timely filed objections to the Magistrate Judge's Findings and Recommendation. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b). When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

Plaintiff raises the following objections that were previously raised before Magistrate Judge Papak: (1) the ALJ erred in rejecting the lay testimony of Ms. Fisher, Ms. Donahue, and Plaintiff's mother, Kim Waggener; and (2) the ALJ did not give sufficient reasons for rejecting Plaintiff's subjective complaints to her treating physician Dr. Miller or the opinion of Dr. Miller.

I have carefully considered Plaintiff's objections and conclude that they do not provide a basis to modify the recommendation that the Commissioner's decision be affirmed. I have also

reviewed the pertinent portions of the record *de novo* and find no error in the Magistrate Judge's Findings and Recommendation.

Magistrate Judge Papak correctly concluded that the ALJ did not err in rejecting the lay testimony of Ms. Fisher, Ms. Donahue, or Ms. Waggener because the testimony relied on Plaintiff's subjective reports—which the ALJ found not credible, offered little information about Plaintiff's symptoms, and were not consistent with the medical evidence. Magistrate Judge Papak also did not err in his assessment of Dr. Miller's opinion because it was based on Plaintiff's subjective reports and included conclusory statements of Plaintiff's inability to work.

#### CONCLUSION

The Court adopts Magistrate Judge Papak's Findings and Recommendation (#17). Accordingly, the Commissioner's final decision is affirmed.

IT IS SO ORDERED.

DATED this 16th day of April, 2012.

s/Marco A. Hernandez  
MARCO A. HERNANDEZ  
United States District Judge